

# Exhibit D

(f) except as otherwise expressly included as Acquired Assets, all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits;

(g) the Retained Books and Records;

(h) any interest in or right to any refund, rebate or credit of Excluded Asset-Reorganization Taxes; provided, however, that if Buyer makes the election under Section 2.12(b) to treat all the transactions described in this Article II as Designated Sale Transactions (resulting in no transfer of Sellers' Tax attributes to Buyer), then this Section 2.2(h) shall also include any interest in or right to any refund, rebate or credit of Excluded Asset-Sale Taxes;

(i) all Claims and Proceedings of Sellers (other than Claims described in Section 2.1(p));

(j) all Avoidance Actions;

(k) the Excluded IT;

(l) except as otherwise expressly included as Acquired Assets, all shares of capital stock or other equity interests of any Seller or Subsidiary of the Seller or securities convertible into or exchangeable or exercisable for shares of capital stock or other equity interests of any Seller, Subsidiary of the Seller or any other Person;

(m) all Employee Plans, including any assets, trust agreements or other funding Contracts related thereto;

(n) any accounts receivable other than the Acquired Receivables;

(o) the SHIP Purchase Agreement Assets; and

(p) the Credit Card Claims.

Section 2.3 Assumption of Liabilities. Upon the terms and subject to the conditions of this Agreement, on the Closing Date Buyer, or the applicable Assignee, shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, the following Liabilities (collectively, the "Assumed Liabilities"):

(a) all Liabilities of the Seller or any of its Subsidiaries arising out of the ownership of the Acquired Assets or operation of the Business or the Acquired Assets on or after the Closing Date that are Related to any Acquired Asset;

(b) all Liabilities arising on or after the Closing Date or Designation Assignment Date, as applicable, relating to the payment or performance of obligations with respect to the Assigned Agreements;

(c) all Liabilities arising on or after the Closing Date from or related to any Claim, Action, arbitration, audit, hearing, investigation, suit, litigation or other proceeding (whether civil,

criminal, administrative, investigative, or informal and whether pending or threatened or having any other status) arising out of the Assumed Liabilities, the Acquired Assets or the operation of the Business on or after the Closing Date (but not prior to the Closing Date) or relating to facts, actions, omissions, circumstances or conditions existing, occurring or accruing on or after the Closing Date (but not prior to the Closing Date) that are Related to the Acquired Assets or the Assumed Liabilities;

(d) Buyer's obligation to pay Occupancy Expenses during the Designation Rights Period as provided in Section 5.1(b);

(e) all Liabilities for warranties and protection agreements or other services contracts (other than warranties relating to Intellectual Property) for the goods and services of Sellers sold or performed prior to the Closing as to which the holder of such warranty, protection or services contract has submitted a duly completed affirmation of such holder's rights in such warranty, protection or services contract on or prior to the date that is two-hundred and seventy (270) days following the Closing Date;

(f) all Assumed Customer Credits;

(g) all Cure Costs solely with respect to the Assigned Agreements (subject to Buyer Cure Costs Cap);

(h) all Excluded Asset-Sale Taxes (except if otherwise provided in Section 2.4(i) hereof);

(i) all Liabilities resulting from actions or inactions taken by the Sellers or any Affiliate of Sellers in compliance with Section 9.2;

(j) all Liabilities with respect to the Transferred Employees (i) to the extent arising as a result of an event, action or omission that occurs following the Closing and (ii) expressly assumed by Buyer and its Subsidiaries pursuant to Section 9.7; and

(k) all Liabilities relating to amounts required to be paid by Buyer under the Transaction Documents.

Section 2.4 Excluded Liabilities. None of Buyer, any Affiliate of Buyer or any Assignee shall assume, be deemed to assume or become obligated hereunder in any way to pay or perform (whether as a successor to any Seller or otherwise) any Liabilities of any Sellers or any of their respective Affiliates of any kind or nature, known, unknown, contingent or otherwise, whether direct or indirect, matured or unmatured, other than the Assumed Liabilities, (the foregoing including the following, the "Excluded Liabilities") which shall include the following Liabilities:

(a) all Liabilities of the Seller or any of its Subsidiaries arising out of the ownership of the Acquired Assets or operation of the Business or the Acquired Assets prior to the Closing Date;

(b) all Liabilities (i) relating to the payment or performance of obligations arising solely out of facts or circumstances in existence prior to the Closing Date or Designation